

(e) That said statute was unconstitutional and void in that it was a conclusive presumption denying defendant the right to introduce proof and evidence, assuming the province of both court and jury.

10 (f) The said statute was unconstitutional and void in that under the guise of regulating interstate commerce it assumed the power which by the Constitution of the United States is retained by the individual states.

That said demurrer was fully argued and considered and sustained by this court, said case being United States vs. Caroline Products Company, reported in 7 Federal Supplement 500, and that the matters and facts set out in the present indictment are res adjudicata.

2. That the statute under which said indictment is brought was fully considered by the court in the above named decision and having been so considered the decision in that case is now binding upon the court in this case, all parties being the same, the products being the same, and the statute under which this case is brought, being the same.

3. That the bringing of the indictment in this case is in effect an attempt to require this court to grant a re-hearing after the close of the term and on a case which was decided by this court approximately a year and a half ago, and under which decision defendant has built up and acquired extensive property rights.

Wherefore, defendant prays judgment of the said indictment, and that the same may be quashed:

GEORGE N. MURDOCK,
Attorney for Defendant,

Suite 1112 Harris Trust Bldg., Chicago, Illinois.

Resident Attorney for Service:

DENNIS J. GODFREY,
Litchfield, Ill.

[*Duly sworn to by George N. Murdock; jurat omitted in printing.*]
[File endorsement omitted.]

12 In United States District Court

[Title omitted.]

Order overruling motion to quash

July 7, 1937

Come now the parties to this cause by their respective attorneys, and the court having heretofore heard the arguments of said attorneys on the motion to quash the indictment herein and now being fully advised in the premises, it is ordered by the court that the said motion to quash the indictment be and is hereby overruled.

14

In United States District Court

[Title omitted.]

Demurrer

Filed July 12, 1937

Comes now the Caroline Products Company, a corporation, defendant, by personal appearance through its attorney, George N. Murdock, and says that the indictment, and each and every count thereof, and the matters and things therein contained, in manner and form as the same are therein set forth, are not sufficient in law to require it to make answer thereto, and this it is ready to verify; Wherefore it prays judgment of the court here if it ought to be required to make answer unto the said indictment or to any of the counts thereof, and prays that the same may be dismissed.

And the defendant further assigns the following causes of demurrer to the said information and each and every count thereof:

1. The indictment charges a violation of the Act of Congress approved March 4, 1923, entitled "An Act to prohibit shipment of Filled Milk in Interstate Commerce," the said statute being unconstitutional and void in that it deprives defendant of its property without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

2. Said statute is unconstitutional and void in that in its passage the legislative branch of the government has assumed and usurped the powers and duties of the judicial branch of the government in violation of the Constitution of the United States.

15 3. The said statute is unconstitutional and void in that it is an unjust and arbitrary discrimination and classification against the product manufactured by defendant.

4. The said statute is unconstitutional and void in that it denies defendant the equal protection of the laws of the United States in violation of the Constitution of the United States.

5. The said statute is unconstitutional and void in that it is a conclusive presumption which denies defendant the right to introduce proof and evidence, and assumes the province of both the court and jury, in violation of the Constitution of the United States.

6. Said statute is unconstitutional and void in that under the guise of regulating interstate commerce with respect to a certain product it has enacted a statute prohibiting the interstate commerce in said product and so assumed a power which by the Constitution of the United States is retained by the individual states.

CAROLINE PRODUCTS COMPANY,
Defendant.

By CHAS. HAUSER,

President.

GEO. N. MURDOCK,

Attorney for Defendant.

[File endorsement omitted.]

In United States District Court

[Title omitted.]

Memorandum opinion

Filed Oct. 19, 1937

By its demurrer herein, the Defendant raises the question of the constitutionality of the Filled Milk Act (Chapter 3 "Filled Milk" Title 21 U. S. C.). In view of the exhaustive discussion of this question in the case of United States vs. Carolene Products Co., 7 Fed. Sup. 500, the Court feels it unnecessary to make an extensive record of its views. Suffice to say that the Court is satisfied with the reasoning of the late Honorable Louis FitzHenry in United States vs. Carolene Products Co., 7 Fed. Sup. 500, and for the reasons assigned in the opinion in that case, holds the "Filled Milk Act" to be unconstitutional and therefore sustains the demurrer herein.

An order will therefore be entered herein this day sustaining said demurrer and dismissing said cause.

As Springfield, Illinois, October 19, A. D. 1937.

J. LEROY ADAIR,

Judge.

[File endorsement omitted.]

19 In United States District Court for the Southern District of Illinois, Southern Division

Docket No. 3489

UNITED STATES OF AMERICA

vs.

CAROLENE PRODUCTS COMPANY

- Order sustaining demurrer, etc.

Filed Oct. 19, 1937

This cause now coming on to be heard on the Demurrer of the Defendant to the indictment herein, and the Court having now heard arguments of counsel, and being fully advised in the premises, doth

Order, adjudge, and decree that the said demurrer be, and the same is, hereby sustained and this cause dismissed; and the Court doth further hereby certify that his decision sustaining the said demurrer of the Defendant in this cause is based solely upon his construction of the statute involved therein, (Chapter 3 "Filled Milk" Title 21, U. S. C.), and his opinion that the same is unconstitutional.

An exception is granted to the Plaintiff from the Court's ruling sustaining said demurrer and dismissing this cause.

J. LEROY ADAMS,
Judge.

ENTER:

October 19, A. D. 1937.

[File endorsement omitted.]

21

In United States District Court

[Title omitted.]

Petition for appeal

Filed November 18, 1937

Comes now the United States of America, plaintiff herein, and states that on the 19th day of October 1937, a demurrer of the defendant, Carolene Products Company, a corporation, to each and every count of the indictment herein was by the Court sustained, and the plaintiff feeling aggrieved at the ruling of said District Court in sustaining said demurrer, prays that it may be allowed an appeal to the Supreme Court of the United States for a reversal of said judgment and order, and that a Transcript of the record in this cause duly authenticated may be sent to said Supreme Court of the United States.

Petitioner submits and presents to the Court herewith a statement showing the basis of jurisdiction of the Supreme Court to entertain an appeal in said cause.

UNITED STATES OF AMERICA,
HOWARD L. DOYLE,
*United States Attorney,
Southern District of Illinois.*

[File endorsement omitted.]

23

In United States District Court

[Title omitted.]

Assignments of error

Filed November 18, 1937

Comes now the United States of America, by Howard L. Doyle, United States Attorney for the Southern District of Illinois, and avers that in the record proceedings and judgment herein there is manifest error and against the just rights of the said plaintiff in this, to wit:

1. That the Court committed material error against plaintiff in sustaining the demurrer of the defendant, Caroline Products Company, a corporation, to each and every count of the indictment.

2. That the Court committed material error against plaintiff in holding that the Filled Milk Act, Secs. 61-63, Title 21, United States Code, under which each count of the indictment is drawn, is unconstitutional.

3. That the Court committed material error against plaintiff in holding that the Filled Milk Act, Secs. 61-63, Title 21, United States Code, under which each count of the indictment is drawn, is unconstitutional as contravening the due process clause of the Fifth Amendment.

4. That the Court committed material error against plaintiff in holding that the Filled Milk Act, Secs. 61-63, Title 21, United States Code, under which each count of the indictment is drawn, is unconstitutional as a regulation of matters within the jurisdiction of the various states under the guise of regulating interstate commerce.

HOWARD L. DOYLE,
*United States Attorney,
Southern District of Illinois.*

[File endorsement omitted.]

25

In United States District Court

[Title omitted.]

Order allowing appeal to the Supreme Court of the United States

Filed November 18, 1937

This cause having come on this day before the Court on the Petition of the United States of America, plaintiff herein, praying an appeal to the Supreme Court of the United States for a reversal of the judgment herein sustaining a demurrer of the defendant, Caroline Products Company, a corporation, to each and every count of the indictment in said cause, and that a duly certified copy of the Record in said cause be transmitted to the Clerk of the Supreme Court of the United States, and the Court having heard and considered said motion, together with plaintiff's statement showing the basis of the jurisdiction of the Supreme Court to entertain an appeal in said cause, the same having been duly filed with the Clerk of this Court, it is, therefore, by the Court, Ordered and Adjudged that the plaintiff herein, the United States of America, be, and it is hereby, allowed an appeal from the order and judgment of this Court, in sustaining the demurrer of the defendant to the indictment, to the Supreme Court of the United States, and that a duly certified copy

of the record of said cause be transmitted to the Clerk of the Supreme Court.

It is further Ordered that the United States of America be, and it is hereby, permitted a period of forty days from the date hereof in which to file and docket said appeal in the Supreme Court of the United States.

Dated at Springfield, Illinois, this 18th day of November 1937.
By the Court:

(Signed) CHAS. G. BRIGGLE, Judge.

[File endorsement omitted.]

28

In United States District Court

[Title omitted.]

Praeceptum for transcript of record

Filed November 20, 1937

To the CLERK, UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF ILLINOIS:

The appellant hereby directs that in preparing transcript of the record in this cause in the United States District Court for the Southern District of Illinois in connection with its appeal to the Supreme Court of the United States you include the following:

1. Indictment.
2. Demurrer.
3. Opinion.
4. Judgment sustaining demurrer.
5. Petition for Appeal to the Supreme Court.
6. Statement of Jurisdiction of Supreme Court.
7. Assignments of error.
8. Order Allowing Appeal.
9. Notice of service on appellee of Petition for Appeal, Order Allowing Appeal, Assignment of Errors, and Statement as to Jurisdiction.
10. Citation.
11. Praeceptum.

(Signed) HOWARD L. DOYLE,
United States Attorney,
Southern District of Illinois.

Service of the foregoing Praeceptum for Transcript of Record is acknowledged this 19 day of November 1937.

(Signed) GEO. N. MURDOCK,
Attorney for Defendant.

[File endorsement omitted.]

In United States District Court

[Title omitted.]

Appellee's praecipe for record

Filed Nov. 24, 1937

To the CLERK OF THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF ILLINOIS, SOUTHERN DIVISION:

You are hereby requested to incorporate into the transcript of
the record to be filed in the United States Supreme Court, on the
appeal heretofore allowed in this case, in addition to the portions of
the record indicated by the appellant herein, the following:

1. Motion of defendant to quash the indictment.
2. Order of the Court denying same.
3. Appellee's praecipe for record.

GEORGE N. MURDOCK,
Attorney for Appellee.

Received a copy of the above and foregoing praecipe this 24th
day of November 1937.

HOWARD L. DOYLE,
*United States Attorney,
Attorney for Appellant.*

[File endorsement omitted.]

33 [Citation in usual form showing service on Geo. N. Murdock,
filed Nov. 20, 1937, omitted in printing.]

34 [Clerk's certificate to foregoing transcript omitted in
printing.]

35 In Supreme Court of the United States

*Statement of points relied upon and designation of entire record for
printing*

Filed Dec. 29, 1937

Pursuant to Rule XIII, Paragraph 9, of this Court, appellant
states that it intends to rely upon all of the points in its assignment
of errors.

Appellant deems the entire record, as filed in the above entitled
cause, necessary for the consideration of the points relied upon.

STANLEY REED,
Solicitor General.

Service acknowledged December 27, 1937.

GEORGE N. MURDOCK,
Counsel for Appellee.

[File endorsement omitted.]

[Endorsement on cover:] File No. 42121. S. Illinois, D. C. U. S.
Term No. 640. The United States of America, Appellant, vs.
Caroline Products Company. Filed December 16, 1937. Term No.
640 O. T. 1937.